

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
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COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA

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BRIEF FOR APPELLEE

United States Court of Appeals

DISTRICT OF COLUMBIA

OCTOBER TERM, 1944

—
No. 8779

221

TOYD D. HYATT, APPELLANT

v.

RAY L. HUFF, GENERAL SUPERINTENDENT, D. C. REFORMATORY,
APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA

EDWARD M. CURRAN,

United States Attorney.

CHARLES B. MURRAY,

Assistant United States Attorney.

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(I)

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

The appellant was charged with robbery, and after trial before a jury was convicted on May 27, 1943. At the trial he was represented by appointed counsel. He was sentenced to serve a term of three to nine years. No appeal was taken. In March 1944 he submitted his petition for writ of habeas corpus. The court permitted it to be filed without prepayment of costs and issued a rule upon the respondent to show cause why a writ should not issue. Returning to this rule, the respondent denied some of the allegations of the petition. The court, without further pleadings or hearing, discharged the rule and dismissed the petition for habeas corpus. This appeal is from that order.

The petition (appendix in back of brief for appellant—hereinafter designated as App.—1-5) gave a somewhat detailed account of the incidents leading up to the arrest of the

appellant by the police officers. It also contained some argumentative matter and was critical of the appointed attorney, saying that he was disinterested and not sure of himself and incompetent. Complaint also was made of the receipt in evidence of certain confessions. One of these was that of a man named Hager, who was not a witness or a defendant at the trial.

The return to the rule to show cause (App. 7-8) denied that any written statement of Hager was introduced in evidence, and denied that any error was committed at the trial. The court without further proceedings passed an order (App. 9) which recited that because there were no triable issues, the rule was discharged and the petition dismissed.

SUMMARY OF ARGUMENT

Appellee takes the position that the petition set forth no facts which, if granted to be true, justified the issuance of a writ of habeas corpus. Appellee does not claim that the issuing of a rule to show cause and the filing of a return thereto by the respondent improves the position of the appellee on this appeal. Admitting that any relevant issue of fact should have been heard and not disposed of by pleadings, appellee claims there was no such issue raised by the petition.

ARGUMENT

It is settled law that if a petition for habeas corpus sets forth on its face grounds for the issuance of a writ, the writ should issue. The practice of issuing a rule to show cause upon the respondent has been approved by the Supreme Court in *Walker v. Johnston*, 312 U. S. 275, 85 L. ed. 830; but where the petition and the return to the rule and the rebutting pleading, if any, to that return raise issues of fact, they can be determined only after a hearing. See also *In re: Rosier*, 76 App. D. C. 204, 133 F. (2) 316.

In this case the petition (App. 1-5) consisted merely of a detailed statement of facts in the case together with argumentative matter to support the proposition that the appellant ought not to have been convicted on the facts. The issue of guilt, of course, was closed by the verdict of the jury. The

petition also set forth that certain evidence was improperly introduced against the appellant. One of these is said to be a confession of a man named Hager, which involved the appellant as a guilty participant in the robbery. Even granting that there was such a confession and that it was introduced in a trial at which Hager was neither a defendant nor a witness, this fact would not justify the issuance of a writ of habeas corpus, which can never be used as a substitute for appeal. *Hodge v. Huff*, No. 8541, Ct. App. D. C., decided February 7, 1944, 140 F. (2d) 686.

Hence the denial of facts in the return of the respondent to the rule to show cause in nowise contributed as a matter of law to the determination of a basis for refusing to issue the writ of habeas corpus. Such refusal could properly have been based upon the undenied allegations of the petition itself. In the position which appellee takes on this argument, the situation is the same as though that had been done. It may be that the judge to whom the petition was referred wanted some assurance from the prosecuting office that the petitioner had suffered no disadvantage at this trial. In the return to the rule, the prosecuting officer gave such assurance. Whatever practical benefit the rule and the return thereto may have served, they are not relied upon by the appellee on this appeal.

CONCLUSION

It is respectfully submitted that the petition did not state facts justifying the issuance of a writ, and that the court below in refusing to issue it acted properly.

Respectfully submitted.

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